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No. 83-1126

In the Supreme Court of the United States

OCTOBER TERM, 1983

JON CARY MAIER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the warrantless inventory search of an illegally parked truck impounded by the police because the driver lacked a valid license and was unable to move the vehicle was reasonable under the Fourth Amendment.

2. Whether petitioner's brief detention at the scene after the police had discovered $14,000 in cash in the illegally parked truck in which he had been sleeping was reasonable under the Fourth Amendment.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A10) reversing the suppresson order is reported at 691 F.2d 421. The opinion of the court of appeals (Pet. App. D1-D10) affirming petitioner's conviction is reported at 720 F.2d 978. The opinion of the district court (Pet. App. B1-B3) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on November 10, 1983. The petition for a writ of certiorari was filed on January 7, 1983. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following the court of appeals' reversal of an order granting a motion to suppress evidence and an ensuing bench trial in the United States District Court for the District of

Minnesota, petitioner was convicted of possession of 190 pounds of marijuana with intent to distribute it, in violation of 21 U.S.C. 841(a)(1). He was sentenced to two years' imprisonment to be followed by a two-year special parole term. The court of appeals then affirmed petitioner's conviction.

1. The evidence adduced at the hearing on petitioner's motion to suppress the marijuana (reviewed at Pet. App. A1-A5, D1-D6) showed that at approximately 2:00 a.m. on September 10, 1981, Minneapolis police officers Rognlie and Carey received radio instructions to investigate an illegally parked pickup truck in a residential neighborhood. Upon arriving at the scene, the officers found petitioner asleep in the truck, which was parked with its right wheels on the sidewalk. Petitioner produced no identification but gave his name and date of birth to the officers, who then determined through a radio check that petitioner's license had been suspended. In light of the suspension, the officers decided to impound the truck rather than allow petitioner to drive it away; they took possession of the keys and allowed petitioner to depart on foot. Pet. App. A2-A3, D2-D3.

Officer Carey thereupon started to prepare an impound report while Officer Rognlie inspected the contents of the truck cab as part of "normal police procedure to inventory any valuable contents in the vehicle" (Pet. App. A3). When Rognlie observed a large leather bag in the front seat of the vehicle, he called out to petitioner, who was walking away, to inquire whether petitioner owned the bag; petitioner replied that he did not. Rognlie then found a bank pouch that contained a large number of $50 and $100 bills, totaling $14,000 according to a later count. Rognlie ran after petitioner, catching up to him about a block away as petitioner seemingly tried to hide behind a fence. Petitioner denied any knowledge of the money, stating that while he had had

possession of the truck for the last five months, the vehicle belonged to a friend. Rognlie then directed petitioner to return with him to the truck. Pet. App. A3-A4, D3-D4.

After placing petitioner in their squad car, the officers unlocked and opened the truck's camper top. They detected a strong odor of marijuana and observed several sleeping bags and a large sheet of plywood that obstructed a full view of the floor. The officers then lowered the tailgate and observed several opaque plastic bags under the plywood barrier. One of the officers lifted the plywood a few inches, revealing a large, partially open garbage bag that contained marijuana. The officers thereupon arrested petitioner and advised him of his *Miranda* rights. While en route to the jail, petitioner stated that he had been living in the truck for four or five months and he remarked: "It is my dope. I am in trouble and I know it." A subsequent warrant-authorized search of the truck revealed 190 pounds of marijuana. Pet. App. D4-D6.

2. After indictment, petitioner moved to suppress the marijuana, contending that the inventory search of the truck and camper that disclosed the presence of marijuana, which was the basis for the subsequent issuance of the warrant, was conducted in violation of the Fourth Amendment. Petitioner relied primarily on *United States* v. *Wilson*, 636 F.2d 1161 (8th Cir. 1980), which held unlawful an inventory search of a locked automobile trunk conducted after the vehicle had been stopped for traffic reasons and prior to the towing. The suppression motion was referred to a magistrate, who found, inter alia, that the officers had failed to follow police department impoundment procedures and that they had opened a sealed garbage bag containing marijuana before obtaining a warrant. The magistrate also found that the search in this case was indistinguishable from that disapproved in *Wilson* and recommended suppression of the marijuana seized pursuant to the

warrant (Pet. App. C1-C9). The district court accepted the magistrate's findings — except that the court found that the officers had not opened sealed garbage bags before securing a warrant — and concluded that the Eighth Circuit's decision in *Wilson* required suppression of the marijuana (Pet. App. B1-B3).[1]

The government appealed from the suppression order pursuant to 18 U.S.C. 3731. The court of appeals reversed the suppression order, holding (Pet. App. A5-A9) that the inventory search of the camper was proper under *South Dakota* v. *Opperman*, 428 U.S. 364 (1976), and distinguishing its prior decision in *Wilson*. Following denial of an interlocutory petition for a writ of certiorari, No. 82-1361 (Apr. 4, 1983), petitioner was tried and convicted. The court of appeals affirmed petitioner's conviction, adhering to its earlier ruling and rejecting petitioner's additional claim that he had been subjected to an unlawful arrest when he was held in the squad car pending completion of the inventory search (Pet. App. D1-D10).

ARGUMENT

1. Petitioner contends (Pet. 19-56) that *South Dakota* v. *Opperman* does not support the inventory search in issue, arguing that the officers failed to follow police department impoundment procedures and that the search of the camper exceeded the proper scope of an inventory search. These contentions are baseless.

The court of appeals correctly concluded (Pet. App. A6 n.1 & A8 n.2) that the search in question conformed with the Minneapolis police department's standard procedure for inventory searches of impounded vehicles. First, the

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[1]The court stated (Pet. App. B3), however, its view that *Wilson* placed restrictions upon automobile inventory searches that were unjustified in light of this Court's decision in *South Dakota* v. *Opperman*, 428 U.S. 364 (1976).

record clearly refutes petitioner's argument (Pet. 28-29, 53-55) that the truck was not subject to impoundment. As the court of appeals observed (Pet. App. A7-A8), petitioner's truck was "parked illegally in the early hours of the morning," petitioner "was alone without a valid driver's license, and no responsible person was available to remove the truck from the sidewalk." This was confirmed by the testimony of police Sergeant John Boulger at the hearing that the "automatic procedure" in such circumstances was to impound the vehicle (Supp. H. Tr. 38-39). Second, both Officer Rognlie and Sergeant Boulger testified — and petitioner conceded below (*id.* at 36-37) — that once the vehicle had been impounded, police department regulations *required* the officers to conduct an inventory search of the entire vehicle, including any locked compartments or storage areas (*id.* at 8, 36). Even if, as petitioner claims (Pet. 29-30), the officers failed after the search to complete all of the requisite inventory forms properly, that omission would not overcome the controlling consideration: that the search was undertaken and conducted pursuant to the police department's standard practice and that it did not go beyond what the regulations required.[2] Accordingly, the inventory search was proper under *South Dakota* v. *Opperman*, 428 U.S. at 375-376.[3]

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[2]We note also that, although the officers' search of the truck at the scene was conducted as an inventory search, the marijuana in question was later seized pursuant to a warrant-authorized search of the vehicle. It would appear that the discovery of a large quantity of marijuana, which prompted the officers to seek a warrant, explains any departure from the standard documentation of a routine inventory.

[3]There is no merit to petitioner's contention (Pet. 19-34) that the court of appeals erred by rejecting the district court's finding that the inventory search was not conducted in accordance with police department procedure, without expressly ruling that that finding was "clearly erroneous". The court of appeals stated that its finding that the

Petitioner also argues (Pet. 42-56) that, even if the inventory search of the truck's cab was valid, extension of the search to the locked camper unit was unreasonable. As the court of appeals explained, the peculiar facts of this case make this contention frivolous (Pet. App. A9):

> A police officer is justified in assuming that valuable items of personal property are stored in the camper unit of a vehicle impounded by the police when the officer finds $14,000 in currency in a pouch on the front seat of the vehicle and can see through a window that the camper unit contains some items of personal property. An inventory search of a locked camper unit under such circumstances is therefore proper.

Indeed, the policies justifying a thorough inventory of property found in an impounded vehicle reach their zenith when the occupant of the vehicle, not the vehicle's owner, denies all knowledge of $14,000 in cash found therein. In the circumstances of this case, accordingly, the officers' extension of the inventory search to the rear section of the pickup truck camper was reasonable even if, as petitioner asserts

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inventory search complied with police department regulations was based on its own "examination of the record," which required it to disagree with the district court; the court's opinion cited extensively from the record, which strongly supported its position (Pet. App. A7-A8 & n.2). Thus there was no violation of the "clearly erroneous" rule here. In any event, the court of appeals' ruling rested upon its conclusion that the inventory search itself was consistent with regular police practice, whereas the irregularities found by the magistrate apparently related to completion of records concerning the inventory. Accordingly, the court of appeals' ruling rests largely upon the conclusion that the irregularities found by the district court were legally irrelevant.

(Pet. 45), he had a "greater privacy interest" in the camper than in the cab.[4]

2. Petitioner next contends (Pet. 56-61) that he was in effect arrested without probable cause when Officer Rognlie brought him back to the scene of the inventory search after discovering the large amount of cash in the truck's cab and placed him in the squad car while the officers resumed the inventory search. Petitioner claims that his subsequent incriminating statements (see page 3, *supra*) were the fruits of that allegedly unlawful arrest. The court of appeals, however, correctly rejected that contention (Pet. App. D8-D10).

a. We note at the outset that this claim is barred by Fed. R. Crim. P. 12(b)(3) and (f). Petitioner did not challenge his detention or seek suppression of his statements prior to trial. The issue accordingly was not addressed by the court of appeals on the government's appeal from the district court's order suppressing the physical evidence. On defendant's appeal from the judgment of conviction the court of appeals "assume[d] *arguendo* * * * that the [new contention was] properly before" the court (Pet. App. D8). In fact, however, because no good cause for relieving petitioner from his waiver is even suggested, the court of appeals could not in our view have granted relief even had it found this claim to be meritorious.

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[4]The court of appeals properly distinguished its own decision in *Wilson*, on which petitioner relies (Pet. 53-56). As the court noted, in *Wilson* the owner of the car was present, the officers observed no items of personal property that prompted the search of the locked trunk, and "the search itself was unnecessary because the police intended to retain control of Wilson's vehicle for only a short period of time until Wilson could post an appearance bond" (Pet. App. A7). In the instant case, by contrast, the owner of the truck was not present, the officers found $14,000 in cash in the cab of the vehicle, and there was no reason to think that police custody of the vehicle would be of short duration.

b. Petitioner's claim is, in any event, insubstantial. This Court has sanctioned investigative detentions based on reasonable suspicion of criminal activity. See *United States* v. *Cortez*, 449 U.S. 411 (1981); *Adams* v. *Williams*, 407 U.S. 143 (1972); *Terry* v. *Ohio*, 392 U.S. 1 (1968). In the instant case, as petitioner concedes (Pet. 59), the officers' discovery of a large amount of cash in an illegally parked vehicle in which they had found petitioner in the early hours of the morning gave them reason to be "suspicious of crime" (*ibid.*). In these circumstances, the officers' detention of petitioner in the squad car — which "lasted only a few minutes" (Pet. App. D9) — while they completed their inventory search, was amply justified. See *Michigan* v. *Summers*, 452 U.S. 692 (1981). Indeed, to do less would not have been good police work.

Petitioner's reliance (Pet. 58-59) on *Dunaway* v. *New York*, 442 U.S. 200 (1979), is misplaced. In *Dunaway*, police located a murder suspect at a neighbor's house five months after the crime was committed, took him into custody, and transported him to the police station, where more than an hour's worth of interrogation ultimately produced a confession. *Id.* at 202-203 & n.2. The Court held that in those circumstances the detention was "indistinguishable from a traditional arrest" (*id.* at 212). Because the detention was not based on probable cause, it violated the defendant's rights under the Fourth Amendment. By contrast, here petitioner was detained at the scene of a suspicious incident for only the few minutes it took the officers to observe the marijuana in the camper compartment. Once that observation was made, probable cause to arrest petitioner clearly existed. These circumstances do not even approach those that obtained in *Dunaway*. See *United States* v. *Bautista*, 684 F.2d 1286, 1290-1291 (9th Cir. 1982), cert. denied, No. 82-5747 (Feb. 22, 1983).

In any event, as the court of appeals held, even if it be assumed that petitioner was illegally detained, his statements were not suppressible as fruits of any illegality. The court of appeals observed (Pet. App. D9) that petitioner's statements — that he had been living in the camper for months and that the marijuana found therein belonged to him — "were made voluntarily after marijuana had been discovered during a legal search, and after [petitioner] had been given his *Miranda* warnings," and that the statements were obtained "only after intervening events had given police probable cause to arrest" petitioner. Thus, here, unlike *Dunaway*, on which petitioner relies, the statements in question were made at a time when, on any view of the encounter, petitioner was subject to a lawful arrest. The statements therefore were not obtained by exploitation of any illegality in petitioner's detention prior to the ripening of probable cause. Thus, suppression of the statements was in no event required. *Johnson* v. *Louisiana*, 406 U.S. 356, 365 (1972); compare also *Rawlings* v. *Kentucky*, 448 U.S. 98, 106-110 (1980), with *Brown* v. *Illinois*, 422 U.S. 590, 600-604 (1975).[5]

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[5]Even if the statements were improperly received in evidence, their admission was harmless error. The district court observed that even without the statements "the evidence of defendant's guilt is overwhelming" (Tr. 197). The court of appeals did not reach this issue but did remark that "[m]uch of the evidence admitted against [petitioner] (the money, the marijuana, testimony that police found receipts bearing his name in the pouch containing money) was fruit of a search that this Court has already determined was a valid inventory search" (Pet. App. D8).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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